

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Captain Matthew J. Hayduk,)	Civil Action No. 6:19-3355-BHH
)	
Plaintiff,)	
)	
v.)	
)	
)	<u>OPINION AND ORDER</u>
)	
Ben C. Cannon, Jr., Marvin Cannon,)	
Johnny Brown, Shannon Piller, The)	
Greenville County Sheriff's Office, Russell)	
T. Irvin, Melissa Lawson, The City of)	
Greenville, Emily Craigo Phalen, Silverleaf)	
Homeowners Association Inc.,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the Report and Recommendation (ECF No. 53) of United States Magistrate Judge Jacquelyn D. Austin recommending that the Silverleaf Defendants' motion to dismiss (ECF No. 9) be granted with respect to the federal claims; the City Defendants' motion to dismiss (ECF No. 12) be denied with respect to their request that Lawson be dismissed pursuant to Rule 12(b)(5) but granted with respect to the federal claims; the Sheriff's Office Defendants' motion to dismiss (ECF No. 26) be granted with respect to the federal claims; and that this action be remanded to the State court to address Plaintiff's remaining claims. (See ECF No. 53 at 26.) Plaintiff filed no objections and the time for doing so expired on May 1, 2020. After carefully reviewing the Report and Recommendation, the Court adopts the Report and Recommendation in full.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final

determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation”) (citation omitted).

After reviewing the record and the Report and Recommendation of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 53) by reference into this Order. It is therefore ORDERED that the Silverleaf Defendants’ motion to dismiss (ECF No. 8) is hereby GRANTED with respect to the federal claims; the City Defendants’ motion to dismiss (ECF No. 12) is DENIED with respect to their request that Lawson be dismissed pursuant to Rule 12(b)(5) but GRANTED with respect to the federal claims; the Sheriff’s Office Defendants’ motion to dismiss (ECF No. 26) is GRANTED with respect to the federal claims. This action is hereby remanded to the Greenville County Court of Common Pleas, Greenville, South Carolina, to address Plaintiff’s remaining claims. The Clerk of this Court is directed to forward a certified copy of this order to the Clerk of Court for Greenville County.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

May 8, 2020
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.